

## REMARKS

Claims 13-15, 17-21, 26-31 and 34-40 are pending herein.

### The Corrections

It is noted that the Notice of Non-Compliant Amendment specifies that "If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121." [Emphasis in original]. Box 4E was checked. Therefore, only a corrected claims listing appears to be required. This is provided herein.

Claim 13 has been corrected as required in the Notice of Non-Compliant Amendment to change the identifier from "Original" to "Currently Amended," and to underline the phrase, "said transgenic plant being." Claim 20, line 1 has been corrected to underline the "of" before "claim 17." The claims have also been amended to correct a typographical error in the greek letter for gamma in the phrase  $\gamma$ -tocopherol. In addition, claim 17 differs from claim 17 presented in the Response to the Office Action filed May 29, 2007 in that the phrase "the following" was deleted in lines 9-10 as redundant.

### The Rejections under Section 112

Applicants wish to emphasize that the above claims meet the written description and enablement requirements of Section 112, first paragraph. Specifically, the consensus sequences provided in Figure 1 and the limitations incorporated into the amended claims to recite particular structural features (consensus sequences), **meet the second prong of the *Eli Lilly* test.**

Further, the claims recite functional as well as structural features, and thus exclude inoperative embodiments not having gamma methyltransferase activity.

Moreover, the disclosure, beginning with the first full paragraph on page 9 through the last full paragraph of page 10, fully describes and enables the identification of other plants having the claimed sequences capable of providing altered tocopherol

profiles in transformed plants. In addition, Table 2 on pages 30-31 provides a list of specific plants and the altered tocopherol profiles in these plants achievable by insertion of the nucleic acid sequences described and claimed herein.

As further evidence (not previously presented herein) of the fact that the consensus sequences provide structure and function in other plants for the production of gamma tocopherol, it is pointed out that these consensus features are present in sequences listed in Dupont U.S. Patent Publication No. 20070199096, which specifies sequences for gamma tocopherol methyltransferase in its claims, namely sequences 12, 14, 16, 20, 22, 26, 28 and 30 for soybean, corn, lotus, Brassica napus, Perilla and Arabidopsis. These consensus features are also present in sequences listed in Monsanto U.S. Patent Publication No. 20030154513 (now Patent No. 7,244,877), which also specifies sequences for gamma tocopherol, namely sequences 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 31, 33, 34, 35, 36, 37, 38 and 41, for Arabidopsis thaliana, Zea mays, Gossypium hirsutum, Cuphea pulcherrima, Brassica napus, Lycopersicon esculentum, Glycine max, Sorghum bicoor, Tagetes erecta, and Synechocystis. These cases were filed after the filing date hereof.

In view of the foregoing arguments and amendments, it is respectfully requested that all pending rejections be withdrawn.

Although the rejection has not been applied to withdrawn claims 27-31, for which rejoinder has been requested, it is submitted that these claims also recite structural features that meet the second prong of the *Eli Lilly* test.

It is also noted that in view of the arguments previously submitted, the claims appear to be free of the prior art.

### **Conclusion**

All claims pending herein appearing to be in condition for allowance, rejoinder of withdrawn claims and passage to issuance is respectfully requested. This amendment is

accompanied by a Petition to Revoke together with the appropriate small entity fee. It is believed that this response does not necessitate the payment of any additional fees under 37 C.F.R. 1.16-1.17. If the amount authorized is incorrect, however, please deduct from Deposit Account No. 07-1969 the appropriate fee for this submission and any extension of time required.

Respectfully submitted,



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